TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 79-1207
of	:	February 26, 1980
GEORGE DEUKMEJIAN Attorney General	:	
Clayton P. Roche Deputy Attorney General	:	

SUBJECT: LEGITIMATE SUBJECTS FOR EXECUTIVE SESSIONS—Under the provisions of the Ralph M. Brown Act, the subject of the establishment of new administrative positions would not usually be a proper subject for an executive session, but the subject of the work load of particular individuals could be a proper subject if certain conditions apply.

The Honorable David G. Kelley, Assemblyman Seventy-Fifth District, has requested an opinion on the following question:

Under the provisions of the Ralph M. Brown Act, are the following subjects legitimate subjects for executive sessions by the governing body of a local agency:

(a) establishment of new administrative positions;

(b) the work load of existing positions and individuals?

CONCLUSION

(a) Under the provisions of the Ralph M. Brown Act, the subject of the establishment of new administrative positions would not usually be a proper subject for an executive session by the governing body of a local agency.

(b) Under the provisions of the Ralph M. Brown Act, the subject of the work load of particular individuals could be a proper subject for executive session by the governing body of a local agency if (1) the individuals are "employees" within the meaning of section 54957 of the act and (2) work load is defined to include the work the employees do as well as the work assigned to the positions or employees. Whether the work load of existing positions would be a proper subject for executive session would depend upon whether the discussions are with regard to the positions in the abstract, or whether they involve discussions of the work which is being performed by the individuals who are the incumbents of such positions. In the latter case, the discussions would be a proper subject for executive session so long as the positions are those of "employees" within the meaning of section 54957 of the act.

ANALYSIS

The Ralph M. Brown Act is found in section 34950 *et seq.* of the Government Code.[1] The act requires that "legislative bodies" of "local agencies" as defined therein (which includes the governing board) hold meetings which are open to the public, unless otherwise excepted in the act or by some other overruling legal principle, such as the attorney-client privilege. (See generally, §§ 54951–54951.7, 54952–54952.5, 54953, 54957, 54957.1, 54957.6; *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors* (1968) 263 Cal. App. 2d 41.) The basic purpose of the act is set forth in section 54950, and provides that ". . . [t]he people do not give their public servants the right to decide what is good for the people to know and what is not good for them to know" and they " . . . insist on remaining informed so that they may retain control over the instruments they have created."

The Ralph M. Brown Act does, however, recognize that there are certain situations where this basic policy of "government in the sunshine" is outweighed by the necessity for confidentiality. One of these arises in the area of personnel matters. Thus, the so-called "personnel exception" to the open meeting requirements is found in section 54957,[2] which

[1] All section references are to the Government Code unless otherwise indicated.

[2] It is seen that section 54957 provides also for executive sessions with respect to the security of public buildings, services and facilities The other provision contained in the act permitting executive sessions relates to labor negotiations, and is found in section 54957.6, which states:

provides:

> "*Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding executive sessions* with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities, or from holding executive sessions *during a regular or special meeting to consider the appointment, employment or dismissal of a public employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing.* The legislative body also may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.
>
> For the purposes of this section, the term 'employee' shall not include any person appointed to an office by the legislative body of a local agency: provided, however, that nonelective positions of city manager, county administrator, city attorney, county counsel, or a department head or other similar administrative officer of a local agency shall be considered employee positions; and provided, further that nonelective positions of general manager, chief engineer, legal counsel, district secretary, auditor, assessor, treasurer or tax collector of any government district supplying services within limited boundaries shall be deemed employee positions . . . ." (Emphasis added.)

In 61 Ops. Cal. Atty. Gen. 283, 291 (1978), this office pointed out that the primary purpose of the "personnel exception" is to "protect the employee from public embarrassment" with the ancillary purpose being "to permit free discussions of personnel matters by a local government body." It is to be noted that section 54957 is applicable to public "employees," although paragraph two sets forth an enumeration of certain *appointive* positions which, generally speaking, would be "offices" in the legal sense.[3]

> Notwithstanding any other provision of law, a legislative body of a local agency may hold executive sessions with its designated representatives prior to and during consultations and discussions with representatives of employee organizations regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of employees in order to review its position and instruct its designated representatives."

[3] Prior to the enactment of Chapter 959, Statutes of 1975, the "personnel exception" contained in section 54957 applied to both "public officers" and "public employees". For further background

This request for our opinion posits the issues as to whether (a) the establishment of next administrative positions or (b) the work load of existing positions are legitimate subjects for executive sessions. If they are, they are so because they fall within the ambit of "personnel exception" to the open meeting requirements of the Ralph M. Brown Act.[4] We thus must examine the manner in which section 5495 has been interpreted and upheld.

In 61 Ops. Cal. Atty. Gen. 283 (1978), *supra*, this office was presented with the question whether the "personnel exception" permits executive sessions to discuss specific salaries or the job performance of "employees" as defined in section § 54957 without according the employee the right to notice and opportunity to request a public hearing. (*Id.*, at p. 286.) In that opinion we summarized our prior holdings to demonstrate that section 54957 is not restricted to the initial employment or final discharge of an employee, but that the term "employment" as used therein is to be given a broad meaning. We stated:

> "This office has previously held that specific salaries and job performance are proper subjects for discussion in executive session under section 54957. Thus, in 59 Ops. Cal. Atty. Gen. 532, 533 (1976), this office concluded '[t]he governing board of a school district is authorized by the provisions of Government Code section 54957 to meet in executive session to discuss and to evaluate the performance of its superintendent.' We noted arguments against such holding but then stated:
>
> 'Nevertheless, this office consistently has advised public agencies that the purpose in permitting an executive session concerning personnel matters is to avoid undue publicity and embarrassment to the affected employee. See. e.g, 33 Ops. Cal. Atty. Gen. 32 (1959); *Cf.*, *Krausen v. Solano County Janitor College Dist*., 42 Cal. App. 3d 394, 404, (1974); *Lucas v. Board of Trustees*, 18 Cal. App. 3d 988, 991 (1971).
>
> 'In a letter dated October 9, 1970, to the San Diego County Counsel, we concluded that the term "employment" contained in section 54957 ". . . is broad enough to allow local public agencies, including governing boards of school districts, to consider all personnel matters relating to an individual employee at executive sessions and not simply matters relating to initial

---

on the intent of the 1975 amendment, see 59 Ops. Cal. Atty. Gen. 266 (1976).

[4] This assumes that the question is not asked in the context of labor negotiations. Section 54957.6, *supra*, note 2, might provide a separate basis for exemptions if they arise in the context of instructing the board's representative with respect to "salaries, salary, schedules, or compensation paid in the form of fringe benefits." See, generally, 61 Ops. Cal. Atty. Gen. 323, 328 (1978).

employment or final discharge."' (59 Ops. Cal. Atty. Gen., *supra*, at page 535.)

Likewise in letter opinions this office has held that discussion of salaries of specific employees is the proper subject for an executive session. Thus, in I.L. 65–78 we held that the salary and job performance of employees of a hospital district could be discussed in executive session. It was noted that such discussions relate to continued 'employment.' As to specific salaries, it was held:

> . . . [T]he question of . . . [an] individual's salary is an integral part of an evaluation of that individual's past performance and the terms or conditions of his future employment. Such discussions, dealing solely with an evaluation of an employee's performance, may properly be conducted in executive session.' (*Id.* at p. 3.)

See also I.L. 66–184 wherein it was held that discussions of personal qualifications and work history of the manager-engineer of a sanitary district to determine, *inter alia*, the amount of salary which he should be paid were properly held in executive session. Compare, I.L. 68–117, improper to discuss general salary proposals for all teachers in executive session."' (*Id.* at pp. 286–287.)[5]

Thus, as stated in the letter to the County Counsel of San Diego County, referred to in the quotation above, the "personnel exception" "is broad enough to allow public agencies . . . to consider all personnel matters relating to an individual employee at executive sessions." (Attorney General's Unpublished Opinion. I.L 70–183.)

From the foregoing, the conclusion to the questions asked herein are evident. The crucial question is whether a personnel matter relating to an individual employee is involved.

(a) Under the provision of the Ralph M. Brown Act, the subject of the establishment of new administrative positions would not usually be a proper subject for an executive session by the governing body of a local agency. This is so because the positions usually are not yet in existence, and hence have no incumbents. Accordingly, the discussions

[5] We ultimately concluded that a board of supervisors could not discuss the salaries of county employees in executive sessions because of the special provisions of section 25307 which requires that "[a]ll meetings conducted by the board pertaining, to salaries of county employees shall be open and public except as provided in section 54957.6.

would be as to personnel matters generally, or in the abstract. However, we can envision the possibility that in some situations the question might arise in the context of a reorganization which might involve a discussion of the job performance of particular individuals. If such were the case, then the sessions would then fall within the ambit of the rule that section 54957 permits executive sessions to discuss the job performance of individuals, so long as the individuals are "employees" within the meaning of section 54957.

(b) With respect to work load, we understand this term as set forth in the question to include the work an employee does (hence "personnel matter") as well as just the work assigned to the position or employee. Accordingly, under the provisions of the Ralph M. Brown Act, the subject of the work load of particular individuals would be a proper subject for executive session by the governing body of a local agency if the individuals are "employees" within the meaning of section 54957 and the discussions include the work the employees are doing. Whether the work load of existing positions would be a proper subject for executive session would depend upon whether the discussions are with regard to the positions in the abstract, or whether they involve discussions of the work which is being done by the individuals who are the incumbents of such positions. If the latter is the case, the discussions would be a proper subject for executive sessions so long as the positions are those of "employees" within the meaning of section 54957.

*****